

9 FAM 41.103

NOTES

(CT:VISA-2183; 09-29-2014)
(Office of Origin: CA/VO/L/R)

9 FAM 41.103 N1 NONIMMIGRANT VISA APPLICATION FORMS

(CT:VISA-2088; 04-28-2014)

- a. Form DS-160, Online Nonimmigrant Visa Application, is the application form prescribed under INA 222. Form DS-160 is available to the general public at Consular Affairs' Consular Electronic Application Center (CEAC).
- b. If the Form DS-160 is unavailable and one of the following conditions has been met, you may accept alternate paper forms. In every case, you must scan in the paper forms into the NIV case:
 - (1) An applicant has urgent medical or humanitarian travel and you have explicit permission from the Visa Office; or
 - (2) The applicant is a student or exchange visitor who must leave immediately in order to arrive on time for his/her course and you have explicit permission from the Visa Office; or
 - (3) The applicant is a diplomatic or official traveler with urgent government business; and the DS-160 have been unavailable for more than four hours; or
 - (4) The DS-160 has been unavailable for more than three days; and you have explicit permission/guidance from the Visa Office.

In every case, you must scan in the paper forms into the NIV case.

9 FAM 41.103 N2 FORM DS-160

(CT:VISA-2088; 04-28-2014)

- a. The Form DS-160 is a completely electronic nonimmigrant application procedure that includes an electronic signature, replacing the paper Form DS-156.
- b. All information entered into Form DS-160 is available to you at the time of the interview.
- c. You must ensure that Form DS-160 is properly and promptly processed in

accordance with the applicable regulations and instructions.

9 FAM 41.103 N3 RETENTION OF PAPER VISA APPLICATION FORMS

(CT:VISA-2088; 04-28-2014)

If you accept paper-based visa application form pursuant to N1(b) above, you must follow the instructions on the retention and disposition of nonimmigrant visa forms instructions in 9 FAM Appendix F.

9 FAM 41.103 N4 DEFINITION OF “MAKING A VISA APPLICATION”

(CT:VISA-2088; 04-28-2014)

- a. For a nonimmigrant visa (NIV) applicant, making a visa application means submitting a completed Form DS-160 for your formal adjudication.
- b. An applicant must pay the required processing fee or provide evidence of prior payment of the processing fee before the application is received and accepted for your adjudication.

9 FAM 41.103 N5 WHAT CONSTITUTES A VISA APPLICATION

(CT:VISA-2088; 04-28-2014)

Information submitted for the sole purpose of scheduling an appointment does not constitute a visa application. Submitting a Form DS-160 at the time an appointment is scheduled, however, does constitute an application if the scheduling process involves substantive actions or pre-screening.

9 FAM 41.103 N6 APPLICANT TO PROVIDE ALL NAMES BY WHICH KNOWN

9 FAM 41.103 N6.1 Applicant's Names to be Entered on Nonimmigrant Visa Application

(CT:VISA-2088; 04-28-2014)

- a. An applicant's first, middle, and family names should be recorded throughout Form DS-160 exactly as they appear in the applicant's passport. In addition,

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the application should include any other names by which the alien has ever been known; for example, maiden, religious, or professional name, or aliases. The applicant's name must also be provided not only in English phonetics but also in the native linguistic characters; that is, Chinese, Arabic, etc., if required for clearances.

- b. In certain cultures, an applicant may not have a first name, but only a surname. In such cases refer to 9 FAM 41.113 PN1.3.

9 FAM 41.103 N6.2 All Names to be Included in Advisory Opinion Requests

(CT:VISA-2088; 04-28-2014)

You must include all names by which an alien has been known in reports or requests for advisory opinions submitted to the Department's Advisory Opinions Division (CA/VO/L/A).

9 FAM 41.103 N7 APPLICATION BY ALIEN UNABLE TO WRITE

(CT:VISA-2088; 04-28-2014)

If the applicant is illiterate or unable to complete the application, the applicant must be assisted by a third party. The third party must be identified in the application. The third party can assist the applicant in completing the application, but must instruct the applicant on how to endorse the application on his/her behalf by clicking on the "submit application" link to complete the application.

9 FAM 41.103 N8 WHEN FORMS ARE COMPLETED BY OTHER THAN APPLICANT

(CT:VISA-2088; 04-28-2014)

If the applicant is under the age of 16 or physically incapable of completing an application, the alien's parents or guardian may execute the application on his/her behalf. If the applicant has no parent or legal guardian, the application may be completed by any person having legal custody of, or a legitimate interest in, the applicant.

9 FAM 41.103 N9 CONSULAR OFFICER MUST MARK APPLICATION

(CT:VISA-2088; 04-28-2014)

- a. When reviewing Form DS-160, your review of the application will be recorded electronically. Your electronically recorded review of the application will indicate which officer determined the eligibility and proper classification of the applicant.
- b. If you have accepted paper-based nonimmigrant visa application forms pursuant to N1.b above, you must initial all paper application forms. Your initials indicate that you have determined the eligibility and proper classification of the applicant, unless the visa is refused and a notation of the refusal is made on the application.

9 FAM 41.103 N10 LIMITING APPLICATIONS FROM PREVIOUSLY REFUSED APPLICANTS

(CT:VISA-2088; 04-28-2014)

Posts may not implement or continue a written re-application policy. (See 9 FAM 41.121.) You must accept visa applications from previously refused applicants and they must make those applications in person.

9 FAM 41.103 N10.1 Use and Filing of Nonimmigrant Visa Application Forms

(CT:VISA-2183; 09-29-2014)

- a. Form DS-160, Online Nonimmigrant Visa Application is the application form prescribed under INA 222(c). All items on Form DS-160, must be completed *in English, unless otherwise noted on the form*.
- b. In addition to information concerning the issuance or refusal of the visa, the electronic record of the visa application in the NIV or Immigrant Visa Overseas (IVO) system includes the following information:
 - (1) Record of clearances obtained, including the dates;
 - (2) Record of revocation and cancellation of visa;
 - (3) Any further information which would be helpful in reaching a decision if the alien reapplies for a visa (i.e., a case note that the applicant is well and favorably known to the consular officer might eliminate the need for requests for other evidence of eligibility); and
 - (4) Record of re-issuance of visa (in the event a previous visa is spoiled or cancelled).
- c. Notwithstanding information that may be recorded on Form DS-160, you must enter electronic comments for each refusal, so that the database record contains an indication of the evidence that led you to refuse the visa. You are

also strongly encouraged to enter case notes for issued visas to provide information about purpose of travel for ports of entry, public inquiries, fraud investigations, etc.

9 FAM 41.103 N10.2 When Form DS-160 or Form DS-156, Nonimmigrant Visa Application, Constitutes Application

(CT:VISA-2088; 04-28-2014)

Form DS-160, when submitted and signed electronically and viewed at the time an appointment is scheduled constitutes an application if the scheduling process involves substantive actions or pre-screening. An example is a system in which consular personnel pre-screen requests for visa renewals to determine whether to grant interview personal appearance waivers.

9 FAM 41.103 N10.3 Applicant Who Fails to Appear for Interview

(CT:VISA-2088; 04-28-2014)

If an applicant fails to appear for an interview, you should refuse him or her under INA 221(g) and make a case note indicating that the "applicant failed to appear for an appointment." The applicant's record in the nonimmigrant visas (NIV) system should be adjudicated to reflect the INA 221(g) refusal and closed. You may not refuse an applicant under INA 214(b) without an interview.

9 FAM 41.103 N10.4 Open Cases and Fee Payment

(CT:VISA-2088; 04-28-2014)

There are a wide variety of off-site fee payment procedures. All applicants, however, should be able to demonstrate that they have paid the required fee(s). Cases should not be kept open in the NIV database merely to flag a case as "fee paid" if the case is inactive.

9 FAM 41.103 N10.5 Supplemental Data to Determine Eligibility

(CT:VISA-2088; 04-28-2014)

- a. If additional data is needed to supplement the information contained on Form DS-160 so that you can determine the eligibility of an applicant, such data should be obtained by telephone, mail, or during the interview. Pertinent information should be recorded in the NIV system.
- b. You should avoid routinely retaining documents that are submitted in support of

an NIV application but which do not directly serve to establish the applicant's eligibility. Documents that are directly applicable to the case should be scanned into the Consular Consolidated Database (CCD) record. These documents may be returned to the applicant or destroyed.

9 FAM 41.103 N10.6 Affixing Photograph to Nonimmigrant Visa Applications

(CT:VISA-2088; 04-28-2014)

The applicant will either electronically upload a picture file into Form DS-160 or have his/her photo taken at the time when the applicant submits to biometric collection at an Applicant Service Center. In some cases, applicants who are unsuccessful in uploading a photo may have to submit a physical photo to the consular section.

9 FAM 41.103 N11 TRANSLATING VISA FORMS

9 FAM 41.103 N11.1 Availability of Translations of DS-160

(CT:VISA-2088; 04-28-2014)

Form DS-160 is available to the general public at Consular Affairs' Consular Electronic Application Center and at CA's travel Web site and is translated into most common foreign languages, including Arabic, Simplified Character Chinese, Traditional Character Chinese, French, German, Hebrew, Hindi, Indonesian, Italian, Japanese, Korean, Montenegrin, Persian Farsi, Polish, Portuguese, Romanian, Russian, Spanish, Thai, Urdu, and Vietnamese.

9 FAM 41.103 N11.2 Other Translations

(CT:VISA-2088; 04-28-2014)

Posts may provide an information sheet in local language(s) to assist applicants in completing the DS-160. Information sheets must be accurate and the layout of must look as much like the English version of the DS-160 as possible. Department approval is not required for translation; however, posts must forward a copy of the translation to the Office of Visa Services' Post Operations Division (CA/VO/F/P). If you believe a that a tool-tip translation should be available you must submit a written request to CA/VO/F/P detailing the need for the translation. F/P will review this request in conjunction with other interested offices within Consular Affairs.

9 FAM 41.103 N12 DELETION OF NONIMMIGRANT VISAS (NIV) CASES

9 FAM 41.103 N12.1 Efforts Made to Close Nonimmigrant Visas (NIV) Cases

(CT:VISA-2088; 04-28-2014)

- a. You must follow instructions from 9 FAM 41.121 Notes to issue or refuse cases at the time of application. This allows cases to be closed out and minimizes the chances of an inadvertent visa issuance or deletion.
- b. In no case should you delete an actual case or refusal from the system. Even if the refusal is overturned, there must be a record of the original adjudication and subsequent decisions. You should use the overcome/waive functions in the NIV and IVO systems when appropriate. (See 9 FAM 40.6 N4.) You should only delete cases from the system when no visa application exists or a case is clearly a duplicate entered in error. An NIV record without an application can occur when cases have been data-entered but the applicants neither paid an application fee nor were interviewed. If an applicant has paid an application fee but not appeared for the interview, you should refuse that case under INA 221(g) pending a rescheduled interview, not delete the case from the system. Some posts may still have test cases in the system entered during IVO or NIV system installations. You may delete those cases. Only consular officers may authorize the deletion of a case. The accountable consular officer (ACO) or appropriate consular manager must review end-of-day reports daily to monitor deletions, paying close attention to the reason for deletion in each case.

9 FAM 41.103 N12.2 Deletion Does Not Purge Consular Consolidated Database (CCD) Records

(CT:VISA-2088; 04-28-2014)

Deletion of nonimmigrant visas (NIV) records is a tool to be carefully used at post to help ensure the accuracy of post records and the Consular Consolidated Database (CCD). Deleted cases are no longer visible to post. However, deleted cases remain in the CCD and can be retrieved and reviewed by the Department.

9 FAM 41.103 N12.3 Procedures when Provisional Cases Created with Appointment Systems

(CT:VISA-2088; 04-28-2014)

Historically, some posts, particularly those using third-party information service providers or banks to assist them with data-entry, have implemented appointment systems in which they created provisional cases when appointments were made.

Posts should delete these provisional cases only if an application has not been formally made. If an application has been made, you must formally refuse the applicant under INA Section 221(g) even if he or she fails to appear for the interview. You should never create provisional cases for purposes of showing fee paid status or to begin clearance procedures prior to actual application.

9 FAM 41.103 N12.4 Deletion of Duplicate Cases

(CT:VISA-2088; 04-28-2014)

From time to time you may find that duplicate cases have been created, either because of human error or problems associated with the database locking out an earlier case. If a single application has been entered more than once, it is appropriate to delete the duplicate cases. In fact, you should take any steps necessary to ensure that the database accurately reflects applications submitted. Once a case has been printed on a visa foil, it cannot be deleted. A case in refused status cannot be deleted. In both instances, the automated visa processing system will not allow the deletion. You must take particular care to ensure that proper procedures are followed with overcoming previous refusals. If post discovers that a case has been "opened for overcome and/or waive" in error, you should refuse the case again under 221(g) with a case note reflecting the error. You should not delete the case.

9 FAM 41.103 N12.5 Applicants Refused if Visa Abandoned

(CT:VISA-2088; 04-28-2014)

If the case has been adjudicated (print authorized) but not printed and the applicant subsequently decides to withdraw the case and not travel, you should not delete the case, but rather refuse it under INA 221(g) with case notes indicating why you took the action.

9 FAM 41.103 N12.6 Applicants Refused if Application Withdrawn

(CT:VISA-2088; 04-28-2014)

If an applicant withdraws a visa application while it is pending adjudication, you should not delete the case, but rather refuse it under INA 221(g) with case notes indicating why you took the action.

9 FAM 41.103 N13 REGULATIONS PROHIBITING PRIVATE ADVERTISING ON U.S. GOVERNMENT FORMS

(CT:VISA-2088; 04-28-2014)

- a. U.S. Government printing regulations provide that:

"No Government publication or other Government printed matter, prepared or produced with either appropriated or non-appropriated funds or identified with an activity of the Government, shall contain any advertisement inserted by or for any private individual, firm, or corporation; or contain material which implies in any manner that the Government endorses or favors any specific commercial product, commodity or service."

- b. Permitting the name and address of any carrier or travel agent or any private commercial slogan to appear on any U.S. Government form would represent a violation of the above regulation, even if the form was printed at private expense.

9 FAM 41.103 N14 INTAKE PROCEDURES FOR SUBMITTING APPLICATIONS TO CONSULAR SECTION

(CT:VISA-2088; 04-28-2014)

- a. Visa application materials, passports, photos, evidence of payment of machine readable visa (MRV) fee, and appropriate supporting documents may be submitted to the consular section for processing in a number of ways as described below. Regardless of the intake procedure, you must bear in mind the following:
- (1) Intake procedures constitute an avenue for the transfer of physical documents and electronic data to the consular section for processing. They are essentially mechanical and do not reflect on the applicant's qualifications for a visa. In other words, any value added by a third party service provider must take the form of clerical or communication support (for example, in typing forms or hand-delivering documents to the visa section). You must avoid the appearance or implication of third party evaluation of visa applications.
 - (2) You must carefully evaluate local operating needs and conditions to structure intake procedures that provide adequate oversight and internal controls. This is particularly important when involving control of issued visas.
 - (3) Regardless of the method of intake used, you must ensure that you meet

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all regular processing requirements, including personal appearance instructions outlined in 9 FAM 41.102.

- (4) Form DS-160 provides for the advanced, unattended submission of the application form even for applicants who must be interviewed. This can allow you to more effectively complete initial processing requirements prior to interview. You must carefully consider workload and accountability implications of such a process, however.
- b. Walk-in Applicants: Applicants will hand-carry the Form DS-160 confirmation page when they appear at the consular section with an appointment and, at some posts, without an appointment. You should normally assign application screening responsibilities to locally employed staff (LE staff), who will be responsible for reviewing applications for completeness. You must establish procedures to ensure that you accept properly completed applications and that LE staff do not inappropriately defer or refuse processing.
- c. On-Line Applications and Bar-Coding: The DS-160 confirmation has a 2-D barcode which facilitate data entry. You may use this barcode to complement various intake procedures.
- d. Applicants for whom you waive personal appearance as described in 9 FAM 41.102 may submit application materials through a bank or courier service which collects and delivers application materials to the consular section.
- e. With any of the above procedures, you must ensure that:
 - (1) You state in writing criteria for inclusion that comply with 9 FAM 41.102;
 - (2) You have developed explicit, written standard operating procedures for accounting for and controlling documents; and
 - (3) You have developed internal controls procedures to prevent manipulation of procedures by guards, courier service personnel, or other service providers.
- f. Other business:
 - (1) Many applicants will choose to use the services of a travel agent, bank courier service, or other service provider to facilitate the visa application process. This will take various forms, from providing information to assistance in completing Form DS-160 application. You must establish clear procedures in working with these companies to ensure that they meet all processing requirements in the most efficient manner possible and that you avoid all appearance of impropriety. Outside agents provide you with an avenue for providing information to the public and for physically delivering application materials and passports to the visa section. They do not have, and should not imply they have, any role in the visa review or adjudication process;
 - (2) You may not enter into exclusive arrangements with travel agents for any purpose and may not allow travel agency advertising in your consular

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section or imply endorsement of a particular travel agency or group of agencies. Lists of preferred agencies are not appropriate;

- (3) You will generally find it useful to establish channels of communication to the business and travel industries, both to advise agents and airlines of changes in procedure and to provide periodic training as appropriate.

- g. Referrals: Post must follow procedures outlined in 9 FAM Appendix K for cases submitted through the visa referral system.

9 FAM 41.103 N15 LIMITING APPLICATIONS FROM PREVIOUSLY REFUSED APPLICANTS

(CT:VISA-2088; 04-28-2014)

- a. You may not institute a procedure requiring those recently refused visas to submit new applications in writing. Such procedures interpose an unnecessary step in the visa process, which does not result in a visa adjudication and for which no fees are collected.
- b. Applicants who have previously been refused under INA 214(b) may reapply at any time. Applicants who are reapplying must follow the same steps as first-time applicants: paying the MRV fee; submitting a new visa application form and photo; having their biometric data taken; and being interviewed by a consular officer.
- c. You may use the visa appointment system to triage previously denied applicants by limiting the number of slots for them. Alternatively, you may schedule previously refused applicants on only a few days a month or only during traditionally lower-volume periods of the year (e.g., not during Summer Work-Travel season or pre-holiday peak seasons). You must emphasize to line officers, however, the importance of making clear to applicants that they may reapply if they believe that they genuinely qualify since there is no formal appeal process for a nonimmigrant visa refusal.

9 FAM 41.103 N16 PROCESSING APPLICATIONS FROM PREVIOUSLY REFUSED APPLICANTS

(CT:VISA-2088; 04-28-2014)

You may want to consider the following strategies to manage workload from previously refused applicants:

- (1) Ensure that you are collecting MRV fees according to policy. A 214(b) refusal is a final adjudication. Using 221(g) to avoid decisions or hold open the possibility for reapplication invites abuse. You must require a new application and a new fee for reconsideration.

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- (2) Stress NIV statutory requirements and explain 214(b) during outreach, explaining in particular that U.S. immigration law uses the term “immigrant” to describe those not eligible for a “nonimmigrant status” described in INA 101(a)(15). That means that for the purposes of NIV adjudication, “immigrant” means convicted felon, narcotics trafficker, unauthorized employment, etc. as well as immigrant. Dispel the notion that there is an element of luck in visa processing and that applicants may be lucky the following week and be issued a visa. Emphasize the importance of facts. This may be a particularly useful tactic in countries aspiring to the Visa Waiver Program. Emphasize that repeat refusals contribute to the overall refusal rate in a country.
- (3) Use the appointment system to triage previously denied applicants by limiting the number of slots for them.
- (4) Alternatively, schedule previously refused applicants on only a few days a month or only during traditionally lower-volume periods of the year (e.g., not during Summer Work-Travel season or pre-holiday peak seasons). (You must emphasize to line officers, however, the importance of making clear to applicants that they may reapply if they believe that they genuinely qualify since there is no formal appeal of an NIV refusal. Efforts to control previous refusals must not unduly restrict applicants’ ability to reapply that invite alternatives and interventions.)
- (5) Review line officers’ interviewing techniques and emphasize the importance of clearly explaining 214(b) to refused applicants. The officer should state that the applicant has failed to convince the officer that he or she is eligible for the visa per U.S. immigration law, which requires visa applicants to demonstrate to the satisfaction of the consular officer that they are entitled to a nonimmigrant status. You may paraphrase in the manner you consider most effective, such as telling refused applicants that they may not work without authorization in the United States on a tourist visa.
- (6) Review the 214(b) handout (see exemplar in 9 FAM 41.121 Exhibit IV) and review practices to make sure every refused applicant gets a copy. Train officers to emphasize the need for applicants to wait until there has been a significant change in circumstances before re-applying.
- (7) Leave reapplication interviews until all the day’s new cases are complete.
- (8) Possibly assign one experienced officer to all re-applications who can move through these promptly once new applications are complete.

9 FAM 41.103 N17 BIOMETRIC SIGNATURE AND AFFIRMATION OF DS-160 NIV APPLICATION

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(CT:VISA-2088; 04-28-2014)

- a. Posts must scan the applicants fingerprints immediately preceding the interview and not at the conclusion of the interview. You must clearly post the statement below at either:
 - (1) The point at which you verify an applicant's fingerprints; or
 - (2) The point at which you collect the ten-digit fingerprint scan.

Text follows:

"By submitting my fingerprint, I am certifying under penalty of perjury that I have read and understood the questions in my visa application and that all statements that appear in my visa application have been made by me and are true and complete to the best of my knowledge and belief. Furthermore, I certify under penalty of perjury that I will tell the truth during my interview and that all statements made by me during my interview will be complete to the best of my ability."

- b. Posts must place the statement in the window above the fingerprint scanner, or on the counter next to the scanner - whatever works best for post, as long as it is clearly visible to the applicant. Posts that have television monitors in their waiting areas may also wish to place the statement there, but must still display it in front of/above the fingerprint scanner as well. At posts where officers interview in a language other than English, posts should display this text in English and a translation in the appropriate local language(s).
- c. Officers must make sure that each applicant is aware what he or she is agreeing to by submitting his/her fingerprint for verification (or fingerprints in the case of posts with EFM collection workflows). You are not required to repeat the posted text word for word.